

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM B. AOSSEY, JR.,

Defendant.

No. 14-CR-116-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 7

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached.”

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

INSTRUCTION NO. 8

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

INSTRUCTION NO. 9

A reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 10

The Indictment in this case charges the defendant with five different types of crimes.

First, in Count 1, the Indictment charges the defendant with Conspiracy, that is, an agreement with one or more other persons to:

- (1) cover up material facts by a scheme;
- (2) make false and fraudulent statements and representations;
- (3) make and use false documents;
- (4) sell in commerce articles that had been misbranded, with the intent to defraud;
- (5) make false statements on export certificates, with the intent to defraud;
- (6) use the mail, or a private or commercial interstate carrier for the purposes of executing or attempting to execute a scheme to defraud, and to obtain money by means of false and fraudulent pretenses, representations, and promises; or
- (7) use the wire for the purpose of executing or attempting to execute a scheme to defraud, and to obtain money by means of false or fraudulent pretenses, representations, or promises.

Second, under each of Counts 2 through 8, the Indictment charges the defendant committed the crime of Making a False Statement on an Export Certificate or aided and abetted the commission of that offense.

Third, under each of Counts 9 through 15, the Indictment charges the defendant committed the crime of Wire Fraud or aided and abetted the commission of that offense.

(CONTINUED)

INSTRUCTION NO. 10 (Cont'd)

Fourth, under each of Counts 16 through 18, the Indictment charges the defendant committed the crime of Money Laundering or aided and abetted the commission of that offense.

Fifth, in Count 19, the Indictment charges the defendant conspired with one or more other persons to commit the crime of Money Laundering.

The defendant has pleaded not guilty to each of these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count. There is no burden upon a defendant to prove that he is innocent. Instead the burden of proof remains on the government throughout the trial.

INSTRUCTION NO. 11

Count 1 of the Indictment charges the defendant with Conspiracy. It is a crime for two or more people to agree to commit a crime. The crime of Conspiracy, as charged in Count 1 of the Indictment, has four elements, which are:

One, beginning in about 2007, and continuing into at least 2010, two or more persons reached an agreement to commit one or more of the following offenses, that were the objects of the conspiracy:

- Object 1: To cover up material facts by a scheme;
- Object 2: To make false or fraudulent statements and representations;
- Object 3: To make and use false documents;
- Object 4: To sell in commerce articles that had been misbranded, with the intent to defraud;
- Object 5: To make false statements on export certificates, with intent to defraud;
- Object 6: To use the mail, or a private or commercial interstate carrier for the purposes of executing or attempting to execute a scheme to defraud, or to obtain money by means of false or fraudulent pretenses, representations, or promises;
- Object 7: To use the wire for purpose of executing or attempting to execute a scheme to defraud, or to obtain money by means of false or fraudulent pretenses, representations, or promises.

(CONTINUED)

INSTRUCTION NO. 11 (Cont'd)

Two, the defendant voluntarily and intentionally joined in the agreement either at the time it was first reached or at some later time while it was still in effect;

Three, at the time the defendant joined in the agreement, the defendant knew the purpose of the agreement or understanding; and

Four, while the agreement was in effect, a person or persons who had joined in the agreement knowingly did one or more of the following acts for the purpose of carrying out or carrying forward the agreement:

- a. Customer orders were taken by Midamar, via the internet, email, and telephone, for the sale of purported Halal beef products to customers in Malaysia and Indonesia. Each use of the internet, email, and telephone is alleged to constitute a separate overt act.
- b. Midamar placed orders with PM, via email and telephone, for the slaughter and production of beef to be used to fill orders received from customers in Malaysia and Indonesia by Midamar. Each use of email and the telephone is alleged to constitute a separate overt act.
- c. PM shipped beef products to Midamar, and to processors in Iowa as specified by Midamar, to fulfill orders placed with PM by Midamar. Each such shipment is alleged to constitute a separate overt act.
- d. Payments were wired to Midamar's bank account at CRBT, account number "1568," from outside Iowa and outside the United States, including on about the following dates, for shipments of purported Halal beef sold by Midamar. Each such payment is alleged to constitute a separate overt act:

(CONTINUED)

INSTRUCTION NO. 11 (cont'd)

<u>Date</u>	<u>Amount</u>	<u>From</u>
10-30-2009	\$7,982.50	PT Indoguna (Surya Cemerlang)
11-25-2009	15,081.33	Suvinsa
11-24-2009	31,794.92	PT Indoguna (Surya Cemerlang)
12-29-2009	16,105.73	Suvinsa
01-19-2010	7,685.00	Suvinsa
01-19-2010	31,874.80	PT Indoguna (Surya Cemerlang)
01-28-2010	74,459.40	Suvinsa

- e. USDA Export Certificates were generated, including on about the following dates, each of which is alleged to constitute a separate overt act:

CERTIFICATE NO.	ISSUE DATE
1. MPG-317734	June 20, 2007
2. MPG-317737	June 20, 2007
3. MPG-317751	August 17, 2007
4. MPG-762485	January 30, 2008
5. MPG-762506	April 24, 2008
6. MPG-762632	June 19, 2008
7. MPH-057120	July 17, 2008
8. MPH-057127	July 31, 2008
9. MPH-057135	August 27, 2008
10. MPH-057143	September 25, 2008
11. MPH-057081	October 21, 2008
12. MPF-410206	April 15, 2009

13.	MPF-410208	April 16, 2009
14.	MPF-410224	June 10, 2009
15.	MPH-059082	September 23, 2009
16.	MPH-059091	October 21, 2009
17.	MPH-059099	October 30, 2009
18.	MPH-059111	November 19, 2009
19.	MPH-059115	December 2, 2009
20.	MPH-059126	December 30, 2009
21.	MPE-042868	January 14, 2010
22.	MPE-042870	January 14, 2010

- f. Letterhead Certificates were generated, for shipments to Malaysia and Indonesia, including on about the following dates, each of which is alleged to constitute a separate overt act:

<u>Certificate No.</u>	<u>Issue Date</u>
1. MPG-317734	June 20, 2007
2. MPG-317737	June 20, 2007
3. MPG-317751	August 17, 2007
4. MPG-762485	January 30, 2008
5. MPG-762506	April 24, 2008
6. MPG-762632	June 19, 2008
7. MPH-057120	July 17, 2008
8. MPH-057127	July 31, 2008
9. MPH-057135	August 27, 2008
10. MPH-057143	September 25, 2008
11. MPH-057081	October 21, 2008

12.	MPF-410206	April 15, 2009
13.	MPF-410208	April 16, 2009
14.	MPF-410224	June 10, 2009
15.	MPH-059082	September 23, 2009
16.	MPH-059091	October 21, 2009
17.	MPH-059099	October 30, 2009
18.	MPH-059111	November 19, 2009
19.	MPH-059115	December 2, 2009
20.	MPH-059126	December 30, 2009
21.	MPE-042868	January 14, 2010
22.	MPE-042870	January 14, 2010

- g. Certificates of Islamic Slaughter were generated and signed by, or on behalf of, the Director of ISA, for shipments to Malaysia and Indonesia, including on about the following dates, each of which is alleged to constitute a separate overt act:

<u>Certificate No.</u>	<u>Issue Date</u>
1. 0620-07-5156	June 22, 2007
2. 0921-07-6327	September 21, 2007
3. 0817-07-6177	August 17, 2007
4. 0130-08-6916	January 30, 2008
5. 0424-08-7117	April 24, 2008
6. 0619-08-7805	June 19, 2008
7. 0716-08-7951	July 16, 2008
8. 0731-08-8027	July 31, 2008
9. Jumada II 1429H	August 2008

10.	0924-08-8285	September 24, 2008
11.	1022-08-8387	October 22, 2008
12.	0416-09-9160	April 16, 2009
13.	0416-09-9161	April 16, 2009
14.	1006-09-9999	June 10, 2009
15.	0925-09-9610	September 25, 2009
16.	1022-09-9700	October 22, 2009
17.	INDO-09-1A	October 30, 2009
18.	INDO-09-2A	November 20, 2009
19.	1203-09-9809	December 3, 2009
20.	1230-09-9893	December 30, 2009
21.	0114-10-9935	January 14, 2010
22.	INDO-10-1A	January 14, 2010

- h. USDA Export Certificates, Certificates of Islamic Slaughter, (corresponding to the respective item numbers noted in subparagraphs (e) and (g) above) and other documents pertaining to particular beef shipments were sent via wire by Midamar to customers in Malaysia and Indonesia, including on about the dates noted below, each of which is alleged to constitute a separate overt act:

<u>No.</u>	<u>Date</u>	<u>Country</u>	<u>Method</u>
17.	11-03-2009	Indonesia	e-mail
18.	11-23-2009	Indonesia	e-mail
19.	12-03-2009	Malaysia	e-mail
20.	12-30-2009	Malaysia	e-mail
21.	01-14-2010	Malaysia	e-mail and fax
22.	01-14-2010	Malaysia	e-mail

If you unanimously find each of these essential elements have been proved beyond a reasonable doubt and you unanimously and beyond a reasonable doubt agree as to the object or objects of the conspiracy, then you must find the defendant guilty of the crime charged under Count 1; otherwise you must find the defendant not guilty of the crime charged under Count 1.

INSTRUCTION NO. 12

To assist you in determining whether there was an agreement or understanding to commit one or more of the offenses alleged as objects of the Conspiracy offense discussed in the prior instruction, you are advised of the elements of those offenses below.

With regard to **Object 1** of Count 1 of the Indictment, you are instructed that the crime of covering up a material fact by a scheme has four essential elements, which are:

- (1) Knowingly and intentionally concealing the true USDA establishment number reflecting the source of beef products, as alleged in the Indictment;
- (2) By means of a scheme, that is, a course of action intended to deceive others;
- (3) The fact was material to the United States Department of Agriculture; and
- (4) The material fact was about a matter within the jurisdiction of the United States Department of Agriculture. You may find that this element has been satisfied if you find that the United States Department of Agriculture's (USDA) function includes ensuring that beef products are accurately labeled, to include accurately stating the establishment number to reflect the source of the product.

With regard to **Object 2** of Count 1 of the Indictment, you are instructed that the crime of making a false or fraudulent statement or representation has five elements, which are:

- (1) Knowingly and intentionally making a statement or representation as alleged in the Indictment;
- (2) That statement or representation was false or fraudulent;
- (3) The statement or representation concerned a material fact;
- (4) The statement or representation concerned a matter within the jurisdiction of the United States Department of Agriculture; and

(CONTINUED)

INSTRUCTION NO. 12 (Cont'd)

- (5) The statement or representation was known to be untrue when made.

With regard to **Object 3** of Count 1 of the Indictment, you are instructed that the crime of making or using a false document has four elements, which are:

- (1) Voluntarily and intentionally making or using a document containing a false statement on an "Application for Export Certificate," FSIS Form 9060-6; a so-called "Export Certificate," FSIS Form 9060-05; or a "Letterhead Certificate," FSIS Form 2630-9, as alleged in the Indictment;
- (2) At the time, knowing the document contained a false statement;
- (3) The false statement was material to the United States Department of Agriculture; and
- (4) The false document was a matter within the jurisdiction of the United States Department of Agriculture. You may find that this element has been satisfied if you find that the United States Department of Agriculture's function included the receipt and verification of documents pertaining to beef products intended for export from the United States, such as an "Application for Export Certificate," FSIS Form 9060-6; a so-called "Export Certificate," FSIS Form 9060-05; or a "Letterhead Certificate," FSIS Form 2630-9.

With regard to **Object 4** of Count 1 of the Indictment, you are instructed that the crime of selling in commerce items that had been misbranded, with intent to defraud, has four essential elements, which are:

- (1) Knowingly doing any act that had the effect of causing any beef product to become misbranded;

(CONTINUED)

INSTRUCTION NO. 12 (Cont'd)

- (2) With intent to defraud;
- (3) The beef product was capable of use as human food; and
- (4) The beef product was being transported in commerce or held for sale after such misbranding..

The term “misbranded” as applicable to the meat products involved in this case means the labeling is false or misleading in any particular. The term “labeling” includes all labels or other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

With regard to **Object 5** of Count 1 of the Indictment, you are instructed that the crime of making false statements on an export certificate, with intent to defraud, has four essential elements, which are:

- (1) Knowingly making a false statement in any certificate;
- (2) With intent to defraud;
- (3) The statement concerned a material fact; and
- (4) The certificate, whether official or non-official, was provided for in regulations prescribed by the Secretary of the United States Department of Agriculture (USDA).

I instruct you as a matter of law that USDA regulations provide for the issuance of export certificates for beef products exported from the United States.

With regard to **Object 6** of Count 1 of the Indictment, you are instructed that the crime of using the mail, or a private or commercial interstate carrier for the purposes of executing or attempting to execute a scheme to defraud, and to obtain money by means of false and fraudulent pretenses, representations, and promises has three elements, which are:

(CONTINUED)

INSTRUCTION NO. 12 (Cont'd)

- (1) Voluntary and intentional participation in a scheme to defraud with knowledge of its fraudulent nature. As described in the Indictment, the scheme involved the sale and shipment of purported Halal beef to customers in Indonesia and Malaysia, knowing that the beef did not meet each country's requirements for beef imports, because it did not originate from a slaughter facility designated and approved by Indonesia or Malaysia, respectively. As part of the scheme, the defendant counseled and caused employees of Midamar and ISA to change labels on the beef products, and to fabricate and falsify documents accompanying the beef product shipments for the purpose of making it appear, falsely, that the products originated from a designated approved slaughter facility. The scheme and artifice to defraud was executed with the intent to result in payment of money to Midamar.
- (2) With the intent to defraud; and
- (3) The mail, or a commercial or private interstate carrier, was used, or caused to be used, in furtherance of, or in an attempt to carry out, some essential step in the scheme.

With respect to **Object 7** of Count 1, you are instructed that the crime of using the wire for purpose of executing or attempting to execute a scheme to defraud, and to obtain money by means of false and fraudulent pretenses, representations, and promises, has three elements, which are:

(CONTINUED)

INSTRUCTION NO. 12 (Cont'd)

- (1) Voluntary and intentional participation in a scheme to defraud with knowledge of its fraudulent nature. As described in the Indictment, the scheme involved the sale and shipment of purported Halal beef to customers in Indonesia and Malaysia, knowing that the beef did not meet each country's requirements for beef imports, because it did not originate from a slaughter facility designated and approved by Indonesia or Malaysia, respectively. As part of the scheme, the defendant counseled and caused employees of Midamar and ISA to change labels on the beef products, and to fabricate and falsify documents accompanying the beef product shipments for the purpose of making it appear, falsely, that the products originated from a designated approved slaughter facility. The scheme and artifice to defraud was executed with the intent to result in payment of money to Midamar;
- (2) With the intent to defraud; and
- (3) An interstate wire communication, that is, a wire transfer of funds, was used, or caused to be used, in furtherance of, or in an attempt to carry out, some essential step in the scheme.

INSTRUCTION NO. 13

Counts 2 through 8 of the Indictment charge the defendant with Making a False Statement on an Export Certificate. The defendant may be found guilty of this offense under one of the following two alternatives:

First Alternative:

Making a False Statement on an Export Certificate:

This offense has four essential elements, which are:

One, the defendant knowingly and intentionally made a false statement on an export certificate, to wit: by stating on a Department of Agriculture, Food Safety Inspection Service Form 9060-5, that meat products reflected thereon were produced at USDA establishment number 889A, when in truth and fact the products had been produced at USDA establishment number 683, as follows:

Count 2: Certificate No. MPH-059091 on October 21, 2009;

Count 3: Certificate No. MPH-059099 on October 30, 2009;

Count 4: Certificate No. MPH-059111 on November 19, 2009;

Count 5: Certificate No. MPH-059115 on December 2, 2009;

Count 6: Certificate No. MPH-059126 on December 30, 2009;

Count 7: Certificate No. MPE-042868 on January 14, 2010;

Count 8: Certificate No. MPE-042870 on January 14, 2010;

Two, with intent to defraud;

Three, the statement concerned a material fact; and

Four, the certificate, whether official or non-official, was provided for in regulations prescribed by the Secretary of the United States Department of Agriculture (USDA).

I instruct you as a matter of law that USDA regulations provide for the issuance of export certificates for beef products exported from the United States.

(CONTINUED)

INSTRUCTION NO. 13 (Cont'd)

Second Alternative:

Aiding or Abetting a False Statement on an Export Certificate

The defendant may also be found guilty of Making a False Statement on an Export Certificate even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of the offense.

To have aided and abetted the commission of this offense, the defendant must have:

- (1) known that the offense of Making a False Statement on an Export Certificate was being committed or was going to be committed;
- (2) had enough advance knowledge of the extent and character of the False Statement that was to be made in order to make the choice to disengage from the criminal conduct before the crime was complete;
- (3) knowingly acted in some way for the purpose of causing, encouraging or aiding the commission of the offense; and
- (4) intended to defraud.

For you to find the defendant guilty of Making a False Statement on an Export Certificate by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the elements of the offense of Making a False Statement on an Export Certificate were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

You may, but are not required to, infer the defendant had the requisite advance knowledge that a false statement was going to be made if you find the defendant failed to object or withdraw from actively participating in the crime after the defendant observed others change the establishment numbers on packages of beef.

(CONTINUED)

INSTRUCTION NO. 13 (Cont'd)

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NO. 14

Counts 9 through 15 of the Indictment charge the defendant with Wire Fraud. The defendant may be found guilty of Wire Fraud under one of the following two alternatives:

First Alternative:

Wire Fraud

This offense has three essential elements, which are:

One, the defendant voluntarily and intentionally participated in a scheme to defraud with knowledge of its fraudulent nature.

As described in the Indictment the scheme involved the sale and shipment of purported Halal beef to customers in Indonesia and Malaysia, knowing that the beef did not meet each country's requirements for beef imports, because it did not originate from a slaughter facility designated and approved by Indonesia or Malaysia, respectively. As part of the scheme, the defendant counseled and caused employees of Midamar and ISA to change labels on the beef products, and to fabricate and falsify documents accompanying the beef product shipments for the purpose of making it appear, falsely, that the products originated from a designated approved slaughter facility. The scheme and artifice to defraud was executed with the intent to result in payment of money to Midamar.

Two, the defendant did so with the intent to defraud; and

Three, the defendant used, or caused to be used, an interstate wire communication, that is, a wire transfer of funds, in furtherance of, or in an attempt to carry out, some essential step in the scheme, specifically, the interstate submission by wire of the monetary payments to Midamar's bank account "1568" at Cedar Rapids Bank & Trust, as follows:

(CONTINUED)

INSTRUCTION NO. 14 (Cont'd)

- Count 9:** transmission of \$7,982.50 on October 30, 2009;
- Count 10:** transmission of \$15,081.33 on November 25, 2009;
- Count 11:** transmission of \$31,794.92 on November 24, 2009;
- Count 12:** transmission of \$16,105.73 on December 29, 2009;
- Count 13:** transmission of \$7,685.00 on January 19, 2010;
- Count 14:** transmission of \$31,874.80 on January 19, 2010;
- Count 15:** transmission of \$74,459.40 on January 28, 2010.

If all of these essential elements have been proved beyond a reasonable doubt as to the count under consideration by you, then you must find the defendant guilty of that count. Otherwise, you must find the defendant not guilty of the count under consideration by you.

Second Alternative:

Aiding or Abetting Wire Fraud

The defendant may also be found guilty of Wire Fraud even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of the offense.

To have aided and abetted the commission of Wire Fraud, the defendant, before or at the time the crime was committed, must have:

- (1) known the offense of Wire Fraud was being committed or going to be committed;
- (2) had enough advance knowledge of the extent and character of the Wire Fraud offense in order to make the choice to disengage from the criminal conduct before the crime was complete;

(CONTINUED)

INSTRUCTION NO. 14 (Cont'd)

- (3) knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of the offense; and
- (4) known of the purpose of the scheme to defraud.

For you to find the defendant guilty of Wire Fraud by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the elements of Wire Fraud were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

You may, but are not required to, infer the defendant had the requisite advance knowledge that Wire Fraud was going to be committed if you find the defendant failed to object or withdraw from actively participating in the crime after the defendant knew others had changed the establishment numbers on packages of beef intended for sale to customers in Indonesia, and Malaysia, and had falsified shipping records; knowing that those the beef products would be sold and payments would be received by Midamar for those products.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NO. 15

Counts 16 through 18 charge the defendant with Money Laundering. The defendant may be found guilty of Money Laundering under one of the following two alternatives:

First Alternative:

Money Laundering

This offense has five essential elements, which are:

One, the defendant knowingly made a payment to Tri-Bin, Inc., as follows:

Count 16: \$18,750.00 on or about November 30, 2009;

Count 17: \$18,750.00 on or about January 4, 2010;

Count 18: \$22,168.52 on or about February 1, 2010;

Two, the payment to Tri-Bin, Inc. involved a transfer of currency of a value greater than \$10,000 derived from Wire Fraud, as defined in Instruction 14, or Conspiracy to Commit Wire Fraud, as defined in Instruction 11.

Three, the defendant knew the payment to Tri-Bin, Inc. involved proceeds of a criminal offense;

Four, the payment to Tri-Bin, Inc. took place within the United States; and

Five, the payment to Tri-Bin, Inc. in some way or degree affected interstate commerce.

To prove this offense, the government need not trace the allegedly laundered funds to a particular instance of fraud. It would be sufficient to prove beyond a reasonable doubt that some portion of the financial transaction under consideration by you represented proceeds of Wire Fraud.

(CONTINUED)

INSTRUCTION NO. 15 (Cont'd)

Second Alternative:

Aiding and Abetting Money Laundering

The defendant may also be found guilty of Money Laundering even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of the offense.

To have aided and abetted the offense of Money Laundering, the defendant, before or at the time the crime was committed, must have:

- (1) known the offense of Money Laundering was being committed or going to be committed;
- (2) had enough advance knowledge of the extent and character of the Money Laundering offense in order to make the choice to disengage from the criminal conduct before the crime was complete;
- (3) knowingly acted in some way for the purpose of causing, encouraging, or aiding the commission of the offense; and
- (4) known proceeds of wire fraud would be used to pay business expenses, including to make lease payments on the Midamar building and real property.

For you to find the defendant guilty of Money Laundering by reason of aiding and abetting, the government must prove beyond a reasonable doubt that all of the elements of the offense of Money Laundering were committed by some person or persons and that the defendant aided and abetted the commission of that crime.

(CONTINUED)

INSTRUCTION NO. 15 (Cont'd)

You may, but are not required to, infer the defendant had the requisite advance knowledge that Money Laundering was going to be committed if you find the defendant failed to object or withdraw from actively participating in the crime after the defendant knew others had changed the establishment numbers on packages of beef intended for sale to customers in Indonesia, and Malaysia, and had falsified shipping records; knowing that those the beef products would be sold and payments received for the beef would be applied to business expenses, including to make lease payments on the Midamar building and real property.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NO. 16

Count 19 charges the defendant with Conspiracy to commit Money Laundering. This offense has three essential elements, which are:

One, beginning in at least 2007, and continuing through about 2012, two or more persons reached an agreement or came to an understanding to commit Money Laundering, as set forth in Instruction 15.

Two, the defendant voluntarily and intentionally joined in the agreement or understanding either at the time it was first reached, or at some later time while it was still in effect; and

Three, at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding. If you unanimously find each of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 19; otherwise you must find the defendant not guilty of the crime charged under Count 19.

INSTRUCTION NO. 17

As used in these instructions, the phrase “scheme to defraud” includes any plan or course of action intended to deceive or cheat another out of money or property by employing material falsehoods, concealing material facts, or omitting material facts. It also means obtaining money or property from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

A statement or representation is “false” when it is untrue when made or effectively conceals or omits a material fact.

A statement is “fraudulent” if made with the intent to deceive.

A representation or promise is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person or agency in deciding whether or not to engage in a particular transaction. A “material fact” is a fact that would naturally influence or is capable of influencing a decision of a person or an agency. However, whether a representation, promise, or fact is “material” does not depend on whether the person or agency was actually deceived or misled.

A document is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of a person or an agency. However, whether a document is “material” does not depend on whether the person or agency was actually deceived.

To act with “intent to defraud” means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss or loss of property to another or bringing about some financial gain or benefit to oneself or another to the detriment of a third party.

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INSTRUCTION NO. 17 (Cont'd)

In connection with the offenses of Mail and Wire Fraud it is not necessary that the use of the mail, or a private or commercial interstate carrier, or interstate wire facilities, by the participants themselves be contemplated or that the defendant do any actual sending of material by the mail, or a private or commercial interstate carrier, or interstate wire facility; or that the defendant specifically intend that the mail, or a private or commercial interstate carrier, or an interstate wire facility be used. It is sufficient if the mail, a private or commercial interstate carrier, or an interstate wire facility was in fact used to carry out the scheme, and the use of the mail, private or commercial interstate carrier, or interstate wire facility by someone was reasonably foreseeable.

Each separate use of the mail, private or commercial interstate carrier, or interstate wire facility in furtherance of a scheme to defraud constitutes a separate offense.

The government need not prove that the participants in a scheme to defraud met together to formulate the scheme charged, or that there was a formal agreement among them, in order for the defendant to be responsible for the operation of the scheme; or for the use of the mail, private or commercial interstate carrier, or an interstate wire facility, for the purpose of accomplishing the scheme. It is sufficient if only one person conceived the scheme and the defendant knowingly, voluntarily, and intentionally joined and participated in some way in the operation of the scheme in order for the defendant to be held responsible.

It is not necessary that the government prove all of the details concerning the precise nature and purpose of the scheme, that the material sent by the mail, private or commercial interstate carrier, or interstate wire facility was itself false or fraudulent; that the alleged

(CONTINUED)

INSTRUCTION NO. 17 (Cont'd)

scheme actually succeeded in defrauding anyone, or that the use of the mail, private or commercial interstate carrier, or an interstate wire facility was intended as the specific or exclusive means of accomplishing the alleged fraud.

If you find proof beyond a reasonable doubt of a business custom to send certain items interstate by the mail, private or commercial interstate carrier, or by wire, that is evidence from which you may, but are not required to, find or infer that the mail, a private or commercial interstate carrier, or an interstate wire facility was used to deliver those items.

The term “interstate commerce” as used in Instruction 15, includes commerce between any combination of states, territories, and possessions of the United States, including the District of Columbia. A financial transaction “affects interstate commerce” if it is transacted to or through a bank insured by the Federal Deposit Insurance Corporation (FDIC).

INSTRUCTION NO. 18

You may consider acts knowingly done and statements knowingly made by the defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy. With respect to the conspiracies alleged in Count 1 and Count 19 of the Indictment, you are further instructed:

Element One

Element One requires that two or more people reach an agreement to commit the crime or crimes identified in Counts 1 and 19, respectively. For you to find that the government has proved a conspiracy, you must unanimously find that there was an agreement to commit the object or one of the objects specified in the count under consideration by you in the Indictment.

Count 1 specifies seven objects. To convict on that count, you must unanimously agree which object or objects motivated the members of the agreement to act. If you are unable to unanimously agree on at least one of the purposes alleged, you cannot find the defendant guilty of conspiracy as charged in Count 1.

Because Count 19 only charges one object (to commit money laundering by engaging in financial transactions exceeding \$10,000), you must unanimously agree that was the purpose of the conspiracy. If you are unable to unanimously agree, you cannot find the defendant guilty of Count 19.

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INSTRUCTION NO. 18 (Cont'd)

The agreement between two or more people to commit one of the alleged objects of a conspiracy does not need to be a formal agreement or be in writing. A verbal or oral understanding can be sufficient to establish an agreement. It does not matter whether any crime alleged as an object of a conspiracy was actually committed or whether the conspirators actually succeeded in accomplishing their unlawful plan.

The agreement may last a long time or a short time. The members of an agreement do not all have to join it at the same time. You may find that the defendant joined the agreement even if you find he did not know all of the details of the agreement. The government is not required to prove that the conspiracy existed during the entire period of time alleged in the Indictment, or that the defendant was a member of the conspiracy for the entire period of time alleged in the Indictment. What the evidence must show is that a conspiracy existed, and that the defendant joined in the conspiracy at some time during the period alleged in the Indictment.

Element Two

Element Two requires that the defendant voluntarily and intentionally joined the agreement.

If you have determined that two or more people reached an agreement to commit one or more of the crimes alleged as objects of the charge under consideration by you, you must next decide whether the defendant voluntarily and intentionally joined that agreement, either at the time it was first formed or at some later time while it was still in effect.

In deciding whether the defendant joined the agreement, you may consider only the acts and statements of the defendant. A person joins an agreement to commit an offense

(CONTINUED)

INSTRUCTION NO. 18 (Cont'd)

by voluntarily and intentionally participating in the unlawful plan with the intent to further it. It is not necessary for you to find that the defendant knew all the details of the unlawful plan.

Nor is it necessary for you to find that the defendant reached an agreement with every person you determine was a participant in the agreement.

Evidence that a person was present at the scene of an event, or acted in the same way as others or associated with others, does not, alone, prove that the person joined a conspiracy. A person who has no knowledge of a conspiracy, but who happens to act in a way that advances the purpose of the conspiracy, does not thereby become a member. A person's mere knowledge of the existence of a conspiracy, or mere knowledge that an objective of a conspiracy was being considered or attempted, or mere approval of the purpose of a conspiracy, is not enough to prove that the person joined in a conspiracy.

A person may be a member of the agreement even if the person does not know all of the other members of the agreement or the person agreed to play only a minor part in the agreement.

Element Three

Element Three requires that the defendant knew the purpose of the agreement at the time the defendant joined the agreement.

A person knows the purpose of the agreement if he is aware of the agreement and does not participate in it through ignorance, mistake, carelessness, negligence, or accident. It is seldom, if ever, possible to determine directly what was in the defendant's mind. Thus, the defendant's knowledge of the agreement and its purpose can be proved like anything else, from reasonable conclusions drawn from the evidence.

(CONTINUED)

INSTRUCTION NO. 18 (Cont'd)

It is not enough that the defendant and other alleged participants in the conspiracy simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. The defendant must have known of the existence and purpose of the agreement. Without such knowledge, the defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

Element Four

(Only applies to Count 1)

Element Four of Count 1 requires that one of the persons who joined the agreement committed an “overt act” for the purpose of carrying out or carrying forward the agreement. This requirement does not apply to Count 19.

The defendant does not have to personally commit an “overt act” in furtherance of the agreement, know about it, or witness it. It makes no difference which of the participants in the agreement did the act. This is because a conspiracy is a kind of “partnership” so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

Further, the act done in furtherance of the agreement does not have to be an unlawful act. The act may be perfectly innocent in itself.

It is not necessary that the government prove that more than one act was done in furtherance of the agreement. It is sufficient if the government proves one such act; but in that event, to return a verdict of guilty, you must all agree as to which act or acts were committed.

INSTRUCTION NO. 19

The government is not required to prove that the defendant knew that his acts or omissions were unlawful. An act is done “knowingly” if a defendant is aware of the act and did not act through ignorance, mistake or accident. You may consider evidence of the defendant’s act and words, along with other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 20

You will note that the Indictment charges that the offenses were committed “beginning in about,” “on about,” and “beginning in at least” certain dates or years. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NO. 21

You have heard testimony about the character and reputation of the defendant for truthfulness and lawfulness. Remember, questions by the attorneys concerning the defendant's character are not evidence.

INSTRUCTION NO. 22

You must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back lengthy testimony.

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 23

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because your verdicts—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdicts.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

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INSTRUCTION NO. 23 (Cont'd)

Fifth, your verdicts must be based solely on the evidence and on the law which I have given to you in my instructions. Your verdicts, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

INSTRUCTION NO. 24

Attached to these instructions you will find the Verdict Forms and Interrogatory Form. These are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms and Interrogatory Form must be the unanimous decisions of the Jury.

You will take the Verdict Forms and Interrogatory Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms and Interrogatory Form, your foreperson will fill out the Verdict Forms and Interrogatory Form, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Forms and Interrogatory Form in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the Jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms and Interrogatory Form in accord with the evidence and these instructions.

July 10, 2015
Date

Linda R. Reade
Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa